

Service Date: October 11, 2002

DEPARTMENT OF PUBLIC SERVICE REGULATION
BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MONTANA

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IN THE MATTER of the Application of)	UTILITY DIVISION
Northwestern Energy, L.L.C.'s 2002 Annual)	
Avoided Cost Compliance Filing –)	DOCKET NO. D2002.7.80
Schedule Nos. QFLT-1 and STPP-1)	ORDER NO. 6434b

INTERIM ORDER

Introduction & Background

In this Order, the Public Service Commission (Commission) acts on Northwestern Energy, LLC's (NWE) Motion for 2002 Annual Avoided Cost Compliance Filing Interim Rate Adjustment. On July 1, 2002, NWE filed its QFLT-1 (Qualifying Facility Long Term) and STPP-1 (Short Term Power Purchases) for July 2002 through July 2003. NWE made this filing pursuant to prior Commission Orders 4865 and 5017. NWE filed its Motion for Interim Rate Adjustment pursuant to §69-3-304, MCA. Colstrip Energy Limited Partnership (CELP) is an intervenor in this docket and opposes the Motion.

CELP argues the following: that the Commission does not have legal authority to grant a temporary or interim rate, but if the Commission does have authority, it should follow calculations which CELP proposes; that the CELP-NWE Power Purchase Agreement (PPA) does not permit an interim adjustment to rates paid to CELP by NWE; and that if the Commission granted an interim rate adjustment to NWE, thereby reducing payments to CELP under the PPA, it would constitute a breach of the prohibition on proration of payment and the method for adjusting contract rates.

NWE filed a Reply stating as follows: that the requested rate be called, more appropriately, a "temporary rate"; that the interests of all parties are fully protected during the period the temporary rates are in effect, as the rates would be subject to adjustment back to the rate effective date with interest; that without a temporary rate order, it will suffer irreparable financial harm; that retroactive ratemaking prevents NWE from requesting rates be trued up back

to the filing date; and to the extent it overpays CELP for the purchased power, NWE would have no ability to recover the overpayment.

Discussion

The Commission may, in its discretion, temporarily approve increases or decreases pending a hearing or final decision. *See* §69-3-304, MCA; §69-3-102, MCA. If the Commission denies NWE's Motion for Interim Rate Adjustment, NWE will have no recourse to be made whole should the Commission determine at Hearing that, prospectively, the rate should be lower than the current rate. CELP, on the other hand, is protected which ever way the Commission decides. Should the Commission not approve the proposed rate, CELP will be compensated retroactively to the interim rate effective date with interest. CELP's argument that interim relief violates the contract between CELP and NWE are without merit. The issue here is Commission authority, not contract rights and obligations. Parties cannot by contract alter the authority of the Commission.

CONCLUSIONS OF LAW

1. The Montana Public Service Commission properly exercised jurisdiction over the parties and matters in this proceeding pursuant to Title 69, Chapter 3, MCA.
2. The Commission may, in its discretion, temporarily approve increases or decreases pending a hearing or final decision pursuant to Title 69, Chapter 3, MCA.
3. The Commission has provided adequate notice and opportunity to be heard to all interested parties in this matter.

ORDER

NOW THEREFORE IT IS ORDERED that NWE's Motion for Interim Rate Adjustment is granted effective August 14, 2002.

DONE AND DATED this 8th day of October, 2002, by a vote of 5 to 0.

BY ORDER OF THE MONTANA PUBLIC SERVICE COMMISSION

GARY FELAND, Chairman

JAY STOVALL, Vice Chairman

BOB ANDERSON, Commissioner

MATT BRAINARD, Commissioner

BOB ROWE, Commissioner

ATTEST:

Rhonda J. Simmons
Commission Secretary

(SEAL)

NOTE: Any interested party may request the Commission to reconsider this decision. A motion to reconsider must be filed within ten (10) days. See 38.2.4806, ARM.